

(b) *Eligible margin loan.* In order to recognize an exposure as an eligible margin loan as defined in §3.2, a national bank or Federal savings association must conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that the agreement underlying the exposure:

(1) Meets the requirements of paragraph (1)(iii) of the definition of eligible margin loan in §3.2, and

(2) Is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

(c) *Qualifying cross-product master netting agreement.* In order to recognize an agreement as a qualifying cross-product master netting agreement as defined in §3.101, a national bank or Federal savings association must obtain a written legal opinion verifying the validity and enforceability of the agreement under applicable law of the relevant jurisdictions if the counterparty fails to perform upon an event of default, including upon receivership, insolvency, liquidation, or similar proceeding.

(d) *Qualifying master netting agreement.* In order to recognize an agreement as a qualifying master netting agreement as defined in §3.2, a national bank or Federal savings association must:

(1) Conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that:

(i) The agreement meets the requirements of paragraph (2) of the definition of qualifying master netting agreement in §3.2; and

(ii) In the event of a legal challenge (including one resulting from default or from receivership, insolvency, liquidation, or similar proceeding) the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions; and

(2) Establish and maintain written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of the definition of qualifying master netting agreement in §3.2.

(e) *Repo-style transaction.* In order to recognize an exposure as a repo-style transaction as defined in §3.2, a national bank or Federal savings association must conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that the agreement underlying the exposure:

(1) Meets the requirements of paragraph (3) of the definition of repo-style transaction in §3.2, and

(2) Is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

(f) *Failure of a QCCP to satisfy the rule's requirements.* If a national bank or Federal savings association determines that a CCP ceases to be a QCCP due to the failure of the CCP to satisfy one or more of the requirements set forth in paragraphs (2)(i) through (2)(iii) of the definition of a QCCP in §3.2, the national bank or Federal savings association may continue to treat the CCP as a QCCP for up to three months following the determination. If the CCP fails to remedy the relevant deficiency within three months after the initial determination, or the CCP fails to satisfy the requirements set forth in paragraphs (2)(i) through (2)(iii) of the definition of a QCCP continuously for a three-month period after remedying the relevant deficiency, a national bank or Federal savings association may not treat the CCP as a QCCP for the purposes of this part until after the national bank or Federal savings association has determined that the CCP has satisfied the requirements in paragraphs (2)(i) through (2)(iii) of the definition of a QCCP for three continuous months.

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Subpart B—Capital Ratio Requirements and Buffers

SOURCE: 78 FR 62157, 62273, Oct. 11, 2013, unless otherwise noted.

§3.10 Minimum capital requirements.

(a) *Minimum capital requirements.* A national bank or Federal savings association must maintain the following minimum capital ratios:

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(1) A common equity tier 1 capital ratio of 4.5 percent.

(2) A tier 1 capital ratio of 6 percent.

(3) A total capital ratio of 8 percent.

(4) A leverage ratio of 4 percent.

(5) For advanced approaches national banks or Federal savings associations, a supplementary leverage ratio of 3 percent.

(6) For Federal savings associations, a tangible capital ratio of 1.5 percent.

(b) *Standardized capital ratio calculations.* Other than as provided in paragraph (c) of this section:

(1) *Common equity tier 1 capital ratio.* A national bank's or Federal savings association's common equity tier 1 capital ratio is the ratio of the national bank's or Federal savings association's common equity tier 1 capital to standardized total risk-weighted assets;

(2) *Tier 1 capital ratio.* A national bank's or Federal savings association's tier 1 capital ratio is the ratio of the national bank's or Federal savings association's tier 1 capital to standardized total risk-weighted assets;

(3) *Total capital ratio.* A national bank's or Federal savings association's total capital ratio is the ratio of the national bank's or Federal savings association's total capital to standardized total risk-weighted assets; and

(4) *Leverage ratio.* A national bank's or Federal savings association's leverage ratio is the ratio of the national bank's or Federal savings association's tier 1 capital to the national bank's or Federal savings association's average total consolidated assets as reported on the national bank's or Federal savings association's Call Report minus amounts deducted from tier 1 capital under §3.22(a), (c) and (d).

(5) *Federal savings association tangible capital ratio.* A Federal savings association's tangible capital ratio is the ratio of the Federal savings association's core capital (tier 1 capital) to average total assets as calculated under this subpart B. For purposes of this paragraph (b)(5), the term "total assets" means "total assets" as defined in part 6, subpart A of this chapter, subject to subpart G of this part.

(c) *Advanced approaches capital ratio calculations.* An advanced approaches national bank or Federal savings association that has completed the parallel

run process and received notification from the OCC pursuant to §3.121(d) must determine its regulatory capital ratios as described in this paragraph (c).

(1) *Common equity tier 1 capital ratio.* The national bank's or Federal savings association's common equity tier 1 capital ratio is the lower of:

(i) The ratio of the national bank's or Federal savings association's common equity tier 1 capital to standardized total risk-weighted assets; and

(ii) The ratio of the national bank's or Federal savings association's common equity tier 1 capital to advanced approaches total risk-weighted assets.

(2) *Tier 1 capital ratio.* The national bank's or Federal savings association's tier 1 capital ratio is the lower of:

(i) The ratio of the national bank's or Federal savings association's tier 1 capital to standardized total risk-weighted assets; and

(ii) The ratio of the national bank's or Federal savings association's tier 1 capital to advanced approaches total risk-weighted assets.

(3) *Total capital ratio.* The national bank's or Federal savings association's total capital ratio is the lower of:

(i) The ratio of the national bank's or Federal savings association's total capital to standardized total risk-weighted assets; and

(ii) The ratio of the national bank's or Federal savings association's advanced-approaches-adjusted total capital to advanced approaches total risk-weighted assets. A national bank's or Federal savings association's advanced-approaches-adjusted total capital is the national bank's or Federal savings association's total capital after being adjusted as follows:

(A) An advanced approaches national bank or Federal savings association must deduct from its total capital any allowance for loan and lease losses included in its tier 2 capital in accordance with §3.20(d)(3); and

(B) An advanced approaches national bank or Federal savings association must add to its total capital any eligible credit reserves that exceed the national bank's or Federal savings association's total expected credit losses to the extent that the excess reserve amount does not exceed 0.6 percent of

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the national bank's or Federal savings association's credit risk-weighted assets.

(4) *Supplementary leverage ratio.* An advanced approaches national bank's or Federal savings association's supplementary leverage ratio is the simple arithmetic mean of the ratio of its tier 1 capital to total leverage exposure calculated as of the last day of each month in the reporting quarter.

(5) *Federal savings association tangible capital ratio.* A Federal savings association's tangible capital ratio is the ratio of the Federal savings association's core capital (tier 1 capital) to average total assets as calculated under this subpart B. For purposes of this paragraph (c)(5), the term "total assets" means "total assets" as defined in part 6, subpart A of this chapter, subject to subpart G of this part.

(d) *Capital adequacy.* (1) Notwithstanding the minimum requirements in this part, a national bank or Federal savings association must maintain capital commensurate with the level and nature of all risks to which the national bank or Federal savings association is exposed. The supervisory evaluation of a national bank's or Federal savings association's capital adequacy is based on an individual assessment of numerous factors, including those listed at this section (national banks), 12 CFR 167.3(c) (Federal savings associations).

(2) A national bank or Federal savings association must have a process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive strategy for maintaining an appropriate level of capital.

§3.11 Capital conservation buffer and countercyclical capital buffer amount.

(a) *Capital conservation buffer.* (1) *Composition of the capital conservation buffer.* The capital conservation buffer is composed solely of common equity tier 1 capital.

(2) *Definitions.* For purposes of this section, the following definitions apply:

(i) *Eligible retained income.* The eligible retained income of a national bank or Federal savings association is the national bank's or Federal savings as-

sociation's net income for the four calendar quarters preceding the current calendar quarter, based on the national bank's or Federal savings association's quarterly Call Reports, net of any distributions and associated tax effects not already reflected in net income.

(ii) *Maximum payout ratio.* The maximum payout ratio is the percentage of eligible retained income that a national bank or Federal savings association can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. The maximum payout ratio is based on the national bank's or Federal savings association's capital conservation buffer, calculated as of the last day of the previous calendar quarter, as set forth in Table 1 to §3.11.

(iii) *Maximum payout amount.* A national bank's or Federal savings association's maximum payout amount for the current calendar quarter is equal to the national bank's or Federal savings association's eligible retained income, multiplied by the applicable maximum payout ratio, as set forth in Table 1 to §3.11.

(iv) *Private sector credit exposure.* Private sector credit exposure means an exposure to a company or an individual that is not an exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, a MDB, a PSE, or a GSE.

(3) *Calculation of capital conservation buffer.* (i) A national bank's or Federal savings association's capital conservation buffer is equal to the lowest of the following ratios, calculated as of the last day of the previous calendar quarter based on the national bank's or Federal savings association's most recent Call Report:

(A) The national bank's or Federal savings association's common equity tier 1 capital ratio minus the national bank's or Federal savings association's minimum common equity tier 1 capital ratio requirement under §3.10;

(B) The national bank's or Federal savings association's tier 1 capital ratio minus the national bank's or Federal savings association's minimum tier 1 capital ratio requirement under §3.10; and